

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA**

**CRYSTAL DAVID, individually
and on behalf of her deceased son,
ROBIN THERIOT**

CIVIL ACTION NO.:

DISTRICT JUDGE:

VERSUS

MAGISTRATE JUDGE:

**NATIONAL INTERSTATE
INSURANCE COMPANY,
SPIRIT TRUCK LINES, LLC
and JAMIE VASQUEZ**

NOTICE OF REMOVAL

NOW INTO COURT, through undersigned counsel, come Defendants, National Interstate Insurance Company, and Spirit Truck Lines, LLC, (hereinafter collectively referred to as “Defendants”), who file this Notice of Removal pursuant to 28 U.S.C. § 1332 and 28 U.S.C. § 1441, and hereby remove this matter from the docket of the 16th Judicial District Court for the Parish of St. Martin, State of Louisiana, to the docket of this Honorable Court.

I.

On or about December 10, 2021, Plaintiff, Crystal David (hereinafter referred to as “Plaintiff”), filed a survival and wrongful death lawsuit against Defendants, National Interstate Insurance Company, Spirit Truck Lines, LLC, and Jamie Vasquez, in the 16th Judicial District Court for the Parish of St. Martin, State of Louisiana, Docket Number 091175, entitled, “*Crystal David, Individually and on behalf of her deceased son, Robin Theriot, vs. National Interstate*

*Insurance Company, Spirit Truck Lines, LLC, and Jamie Vasquez.”*¹ The lawsuit arises from a motor vehicle collision which occurred on or about December 31, 2020 in St. Martin Parish, Louisiana.²

II.

Service of citation and a copy of the Original Petition for Damages was requested on Defendant, Spirit Truck Lines, was reportedly served through Certified Mail on or about December 23, 2021.

III.

Service of citation and a copy of the Original Petition for Damages was requested on Defendant, National Interstate Insurance Company, which was reportedly served through the Louisiana Secretary of State on or about December 15, 2021.

IV.

Service of citation and a copy of the Original Petition for Damages was requested on Defendant, Jamie Vasquez, via the Louisiana Long Arm Statute. Based on information and believe, Vasquez has not been served at this time.

¹ A copy of the Petition for Damages is attached hereto as Exhibit “A”

² See Exhibit A, at ¶ 3.

I. REMOVAL IS PROPER BECAUSE THIS COURT HAS SUBJECT MATTER JURISDICTION PURUSANT TO 28 U.S.C. § 1332.

V.

28 U.S.C. § 1332 provides federal district courts with concurrent original jurisdiction in cases “where the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and is between – (1) citizens of different states....”

A. THE AMOUNT IN CONTROVERSY EXCEEDS \$75,000.00

VI.

The Fifth Circuit has explained that for purposes of establishing removal jurisdiction, a defendant may demonstrate that the amount in controversy exceeds \$75,000, “in either of two ways: (1) by demonstrating that it is ‘facially apparent’ from the petition that the claim likely exceeds \$75,000 of (2) ‘by setting forth the facts in controversy – preferably in the removal petition, but sometimes by affidavit – that support a finding of the requisite amount.’”³

VII.

Louisiana Code of Civil Procedure Article 893 specifically prohibits the pleading of the amount of monetary damages sought. However, Plaintiff’s original Petition for Damages did not comply with the Louisiana Code of Civil Procedure in that it did not contain a general allegation that the claims are more or less than the requisite amount for federal court diversity jurisdiction, as is specifically required by La. C.C.P. art. 893(A)(1).⁴

VIII.

³ *Grant v. Chevron Phillips Chemical Co.*, 309 F.3d 864, 868 (5th Cir. 2002)(quoting *Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326, 1335 (5th Cir. 1995).

⁴ See Exhibit A generally.

Plaintiff claims that her son Robin Theriot, suffered physical and mental pain and suffering as a survival claim. Plaintiff claims that she suffered loss of love and affection, care, comfort, and companionship, guidance, support, mental anguish, grief, and suffering for the loss of her son.

IX.

It is facially apparent from the Complaint that the amount in controversy exceeds this Honorable Court's jurisdictional minimum of \$75,000.00 for the purposes of diversity jurisdiction pursuant to 28 U.S.C. §1332. While there is not a *per se* rule that wrongful death claims exceed \$75,000.00., the Fifth Circuit has consistently held that it is facially apparent the amount in controversy exceeds \$75,000.00 in wrongful death claims.⁵

B. COMPLETE DIVERSITY EXISTS

XI.

Defendant, Jamie Vasquez, is a person of the full age of majority and is domiciled in the State of Texas, and therefore is a citizen of the State of Texas.

XII.

Defendant, National Interstate Insurance Company, is a foreign insurance company, which was incorporated under Ohio law and has its principal place of business and domicile in Ohio. Therefore, National Interstate Insurance Company is a citizen of Ohio for purposes of diversity.

⁵ *Menendez v. Wal-Mart Stores, Inc.*, 2010 WL 445740, *67 (5th Cir. 2010) (internal citations omitted);

XIII.

Defendant, Spirit Truck Lines, is a foreign corporation, which was incorporated under Texas law and has its principal place of business located in Texas. Therefore, Spirit Truck Lines, LLC, is a citizen of State of Texas for purposes of diversity.

XIV.

Based on the information in the introductory Paragraph of the Petition for Damages, Plaintiff, Crystal David, is a person of the full age of majority of Louisiana, and therefore is a citizen of the State of Louisiana.⁶

XV.

There is complete diversity between the Plaintiff and Defendants. As of the date of filing of this Notice of Removal, Plaintiff has not named any other parties as Defendants.

II. DEFENDANTS HAVE SATISFIED THE PROCEDURAL REQUIREMENTS FOR REMOVAL

XVI.

Citation and a copy of the Original Petition for Damages were reportedly served on National Interstate Insurance Company on December 15, 2021.

XVII.

Citation and a copy of the Original Petition for Damages were reportedly served on Spirit Truck Lines, LLC, through its registered agent for service on or about December 23, 2021.

⁶ See Exhibit "A" at introductory paragraph.

XVIII.

Citation and a copy of the Original Petition for Damages have not been served on Jamie Vasquez.

XIX.

Because Vasquez has not been served, there is no other party needed to consent to the removal of this case.

XX.

The Notice of Removal was properly filed within thirty (30) days of December 23, 2021, when the last served Defendant was served.

XXI.

Based upon the foregoing, this is a civil action over which this Court has original jurisdiction pursuant to 28 U.S.C. §1332 (a), and is one which may be removed to this Court by Defendants pursuant to 28 U.S.C. §1441; this is a civil action wherein Plaintiff's alleged damages exceed the sum of \$75,000.00, exclusive of interest and costs, and the Plaintiff is diverse from the Defendants.

XXII.

In accordance with 28 U.S.C. §1446(d), Defendants will provide appropriate Notice of this Removal to the Plaintiff and to the Clerk of Court for the 16th Judicial District Court for the Parish of St. Martin, State of Louisiana.

XXIII.

No previous application has been made for the relief requested herein.

XXIV.

The Notice of Removal is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure and Uniform Local Rules of the District Courts.

JURY DEMAND

XXV.

Defendants are entitled to and hereby request a trial by jury on all issues herein.

WHEREFORE, Defendants, National Interstate Insurance Company, and Spirit Truck Lines, LLC, pray that the action entitled: “*Crystal David, Individually and on behalf of her deceased son, Robin Theriot, vs. National Interstate Insurance Company, Spirit Truck Lines, LLC, and Jamie Vasquez,*” bearing number 091175, pending in the 16th Judicial District Court for the Parish of St. Martin, State of Louisiana, be removed from the state court docket to the United States District Court for the Western District of Louisiana.

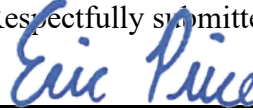
CERTIFICATE OF SERVICE

I hereby certify that the foregoing pleading has been delivered to all counsel of record, either through the CM/ECF system or by email transmission, this **30th** day of **December, 2021**, at their last known address of record.



ERIC R. PRICE

Respectfully submitted,



GUY D. PERRIER, #20323

ERIC R. PRICE, #40017

PERRIER & LACOSTE, LLC

One Canal Place

365 Canal Street, Suite 2550

New Orleans, Louisiana 70130

Tel: (504) 212-8820; Direct: (504) 535-2588

Fax: (504) 212-8825

Email: gperrier@perrierlacoste.com

Email: eprice@perrierlacoste.com

Counsel for Defendants,

*National Interstate Insurance Company, and Spirit
Truck Lines, LLC,*